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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/544,878	04/07/2000	Michael Dennis Krysiak	P/23-5-CIP	1363
7590	11/13/2003		EXAMINER	
Philip M Weiss Weiss & Weiss 310 Old Country Rd Suite 201 Garden City, NY 11530			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 11/13/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/544,878	KRYSIAK ET AL.
	Examiner Andrea M. Valenti	Art Unit 3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 4-22 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 4-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 3442317 to Schuart et al.

Regarding Claims 4-16, Schuart et al teaches an agglomeration process utilizing a tumbler or rotating drum (Schuart et al English translation page 3), but Schuart et al is silent on specifically identifying a pan pellitzer, disk pellitzer, balling disk, paddle mixer, horizontal pan, powder blenders, flow-jet mixer, planetary mixer, cone mixer, ribbon mixer, pin type mixer, vertical mixer, pin mixer, cone pelletizer, fluidized bed. However, these apparatuses are all old and well-known seed coating or mixing machines. It would have been obvious to one of ordinary skill in the art to modify the teachings of Schuart et al with any of the machines listed in claims 4-17 since these are merely alternate equivalent agglomeration machines that perform the same intended function of agglomerating particles with a coating and one would select a particular agglomeration machine to satisfy different economic, maintenance, and time parameters and to accommodate different types of fertilizers or nutrient coatings.

Regarding Claim 22, Schuart et al is silent on the preconditioning and conditioning steps are repeated to add additional layers to the seed. However, it would have been obvious to one of ordinary skill in the art to modify the teachings since the modification is merely duplicating the process to provide a more comprehensive seed coat and does not present a patentably distinct limitation.

Response to Arguments

Applicant's arguments filed 8 September 2003 have been fully considered but they are not persuasive.

Examiner maintains that Schuart et al does teach a tumble/agitate agglomeration process as discussed on by Schuart page 3, last paragraph on the page continued on to the top of page 4. Shuart teaches a revolving drum and that a powder substance adheres to the seed as a result of the mechanical agitation of the seed and powder in the drum. Examiner maintains that applicant's claim language does not patentably distinguish over the teachings of the prior art. Tumble/agitate agglomeration is an old and well-known coating means and merely selecting this technology to be used to coat food, or seeds, etc is an obvious modification of selecting an known technology while maintaining the intended function of the device.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV

Robert P. Swiatek
ROBERT P. SWIATEK
PRIMARY EXAMINER
ART UNIT 3643